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C O N F I D E N T I A L SECTION 01 OF 04 KATHMANDU 000616

SIPDIS

STATE FOR SA/INS

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TAGS: PHUM PGOV NP

SUBJECT: HUMAN RIGHTS: AN UPDATE ON DETENTIONS AFTER FOUR MONTHS OF THE EMERGENCY

REF: A. (A) 01 KATHMANDU 2300

1B. (B) KATHMANDU 0450

1C. (C) KATHMANDU 0615

Classified By: POL/ECON MAHONEY. REASON: 1.5 (B,D).

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SUMMARY  
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11. (C) SUMMARY: Despite the Prime Minister's assurances to donors and the general public that the curtailment of human rights under the state of emergency is directed only against Maoists and their supporters (Ref A), the security forces appear to be casting their nets more broadly, detaining and holding incommunicado left-leaning journalists, lawyers, and human rights activists. Although on March 26 the Royal Nepal Army (RNA) released four such individuals whose cases had gained international attention, the actual number of other, lesser-known detainees still being held under the emergency anti-terrorism ordinance is unknown. On a more positive note, the RNA has agreed to allow the ICRC access to children conscripted by the Maoists who are now in Army detention (Ref B), although the ICRC has not had confidential access to other prisoners held by either the RNA or the police since March 7. The Ambassador stressed the need to maintain respect for basic human rights in a March 20 meeting with the King and in a March 27 meeting with the Foreign Secretary, while DATT and emboffs have made the same points with the RNA, Home Ministry and others in the Ministry of Foreign Affairs. The Foreign Secretary told the Ambassador March 27 the ICRC headquarters agreement is in the final stages of approval (Ref C). The Embassy will continue to put pressure on the Government of Nepal (GON) to stand by its previous statements that respect for the basic human rights of the general population will not be abridged despite the emergency. End summary.

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TERRORISM LAWS  
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12. (U) After the promulgation of the state of national emergency November 26, Prime Minister Sher Bahadur Deuba emphasized to the U.S. Embassy and to other donors that the curtailment of fundamental human rights under this extraordinary new circumstance and the special powers given to the security forces under the accompanying Terrorist and Destructive Acts Ordinance (TADO) were directed only at Maoists and their supporters, and not at the population at large (Ref A). Since then, emboffs have repeatedly heard similar assurances from others in the Government of Nepal (GON), the police, and the Royal Nepalese Army (RNA). Although many civil rights have been suspended under the emergency, the right to file habeas corpus petitions and the right to counsel during detention--even under the TADO--have not. In addition to acts that damage or destroy property, life, or limb, with the aim of undermining the "sovereignty or integrity of the Kingdom of Nepal, or security or peace and order of the Kingdom of Nepal," the TADO defines terrorism as "any other act committed in such a manner as to spread an atmosphere of fear or terror." The TADO allows for the arrest without warrant by any member of the security forces (civilian police, paramilitary Armed Police Force, or RNA) of any individual suspected of terrorist activity, and for the subsequent detention of that individual for up to 90 days without charge. Detention may be extended for an additional 90 days with the permission of the Home Ministry. (Note: According to both the Ministry of Law and Justice and a private lawyer, the RNA may pick up suspects but should then turn them over to the civil police as soon as possible. End note.)

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TOWARDS A BROADER DEFINITION OF TERRORIST?  
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13. (SBU) On March 3 the RNA picked up Gopal Budhatoki, the long-time editor of the left-leaning vernacular publication "Sanghu," at about 10:30 p.m. as he was returning home from the office, without informing either his family or his place of work. After several Opposition MPs raised his apparent

disappearance, PM Deuba acknowledged in Parliament March 6 that Budhatoki was being detained by the RNA. Several press contacts speculated Budhatoki had incurred the wrath of RNA Chief of Army Staff Prajwalla Rana with a recent op-ed piece criticizing the Army Chief for not being on hand to receive the bodies of the soldiers killed in the bloody Feb. 17 attack in Achham. Many asserted that Budhatoki, while decidedly left-wing in outlook, was not known to have Maoist sympathies.

14. (C) In a March 14 meeting with Chief of General Staff Gen. Pyar Jung Bahadur Thapa and Director of Military Operations Brig. Gen. Pradip Malla, A/DCM, DATT, and poloff raised the detention of Budhatoki. Poloff acknowledged that during the state of emergency certain restrictions on the press must be maintained in order to safeguard information vital to national security. It is important to maintain a distinction between threats to national security and other situations, however. Recalling the PM's previous statements that emergency curtailments of human rights are directed only at terrorists, she said that respect for basic human rights should, as far as possible, be upheld despite the emergency. The case had attracted significant attention, including from the U.S., and the Embassy is concerned at his continued detention incommunicado and his family's lack of access to him.

15. (C) Malla responded that Budhatoki posed a security threat because he had published a "seditious" article intended to incite "mutiny" among RNA ranks. Thapa added that the RNA planned to hold Budhatoki for just "a few days to scare him" and would then release him. If the RNA released him too soon, Thapa predicted, Budhatoki would not be sufficiently chastened and it would appear the release had come "under pressure." Both men asserted that Budhatoki was being well treated. (Note: According to a local human rights group, about 30 journalists, including some clearly affiliated with Maoist publications, are currently in detention in different parts of Nepal. End note.)

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AND MORE ARRESTS  
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16. (SBU) According to the local human rights group Center for Victims of Torture (CVICT), on March 12 Saligram Sapkota, President of the Banke District Appellate Court Nepal Bar Association, was arrested from his home at 4:00 a.m. by plainclothes RNA. Sapkota is a member of the little-known, leftist Janabadi Morcha (Democratic Front) and had just recently, according to the British Embassy, filed a habeas corpus petition for another individual detained by security forces. After his wife and other relatives visited him the following day at the Chisapani Army Barracks in Nepalganj, Banke, his wife asserted he had bruises on his face and body and claimed he appeared to have been mistreated. (Note: The Embassy has not independently confirmed any evidence of mistreatment. End note.) Sapkota reportedly told his wife his RNA captors had accused him of "indirectly" supporting the Maoists.

17. (SBU) On March 16 GON security forces, believed to be RNA plainclothesmen, picked up Shyam Shrestha, a journalist; Pramod Kafle, a human rights activist involved in Bhutanese refugee affairs; and Mahesh Maskey, a medical doctor active in human rights, at Tribhuvan International Airport as they were preparing to board a flight to New Delhi. The three were planning to attend a seminar, convened by organizers believed to have links to Maoist groups, with the purported aim of finding ways to re-start dialogue between the GON and the insurgents. Kanak Dixit, a well-respected journalist and long-time Embassy contact who was traveling to New Delhi on other business, observed the arrests. The GON subsequently acknowledged the detentions a few days later but declined to reveal the detainees' whereabouts or allow them access to their families or lawyers. Only Opposition Leader Madhav Kumar Nepal was permitted to see the men, a visit he declined (in not very characteristic fashion) to discuss publicly. Many journalists and human rights activists contacted speculated the trio might be released after the March 25 return of Prime Minister Deuba from an official visit to India. Upon receiving an Embassy inquiry, a Home Ministry official said he was unaware of the detentions and speculated the three were in RNA custody.

18. (C) In a March 20 call on King Gyanendra, the Ambassador stressed the need for the security forces to maintain respect for human rights despite the emergency. The King said he fully understood the need and would ensure that the basic human rights of the general population are not infringed upon during the emergency. (Note: The Ambassador made similar points in his March 27 call on Foreign Secretary Madhu Raman Acharya--Ref C. End note.)

19. (C) In a March 22 meeting with CGS Thapa and DMO Malla,

poloff and DATT again raised human rights issues. Malla and Thapa both deflected questions about reports that the RNA holds prisoners incommunicado, asserting that many of the suspects in question are in fact Maoists. If, after questioning, an individual is determined not to be a Maoist, he is set free. Malla said that Budhatoki's wife had been permitted to visit him and that he would be released "within one week." (Note: Budhatoki's wife later told Embassy she had not/not met him, an assertion subsequently repeated by Budhatoki himself. End note.) He went on to say that during the emergency any statement denigrating the RNA is illegal. Asked if Nepali law requires detainees be permitted to meet with counsel and family members, Malla replied, "That's an American law." When challenged, he corrected himself, but said the visits need not take place within twenty-four hours of detention under the emergency. He confirmed that the right to habeas corpus had not been suspended. Asked if RNA personnel were conducting operations in plain clothes, Thapa replied ambiguously that Special Forces from the 10th Brigade might be conducting such operations. Stating there is "nothing wrong with operating in civilian clothes," he added doing so was necessary in some cases in order to get near the Maoists without alerting them. (Note: We agree.) He concluded the RNA may or may not be using such practices--he could not say for certain.

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FOUR DETAINEES RELEASED  
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¶10. (SBU) In a March 26 meeting at the Ministry of Foreign Affairs, poloff raised the detentions, questioning the legality--even under the emergency--of holding people incommunicado, and noting the increasing inquiries the Embassy was receiving. She added that Foreign Secretary Acharya might likely encounter similar inquiries during his April 2-6 visit to Washington (Ref C). MFA Undersecretary Prahлад Prasai agreed, adding he would ask the Foreign Secretary and Minister of State for Foreign Affairs to raise

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the matter with the PM during their meeting with him later that afternoon.

¶11. (SBU) At about 6:30 p.m. March 26--one day after PM Deuba's return from India--Budhatoki, Shrestha, Kafle, and Maskey were released from RNA custody. Budhatoki told Embassy he never knew where he was being held, and had been kept blindfolded except during meals and in solitary confinement throughout the 23 days of his detention. He said he received no visitors and was never questioned, accused of any crime, or informed of the reason for his detention.

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CHILD MAOISTS AND ICRC ACCESS  
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¶12. (C) In a March 14 meeting with CGS Thapa and DMO Malla, DATT raised the children conscripted--and in many cases abused--by Maoists who now being held in detention at the RNA barracks in Nepalgunj (Ref B). She recommended the RNA arrange for the ICRC (which has not to date visited detainees in RNA custody) to gain access to these children and assess their needs. Following the visits, other arrangements for the children--such as relocation to NGO-sponsored shelters for victims of sexual abuse or other facilities for juveniles--could be worked out. Publicizing the plight of these children--and the fact that the Maoists are conscripting and abusing children--in international fora would help highlight the atrocities committed by the insurgents. Thapa and Malla readily agreed to the idea, with Thapa suggesting the names of NGOs on his own. On March 19 Malla sent letters to the ICRC and two NGOs advising them of the use of children by the Maoists and asking for the organizations' assistance. The Acting ICRC Head of Delegation told poloff March 25 she had already had an encouraging meeting with the RNA and looked forward to gaining access to the child detainees soon. On a less positive note, however, she added that on March 7 the GON suspended the organization's confidential access to prisoners held by police. On March 27, however, Foreign Secretary Acharya told the Ambassador that ICRC's headquarters agreement is in the final stages of approval (Ref C).

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COMMENT  
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¶13. (C) The RNA reaction to the suggestion that child detainees be transferred is welcome. Embassy will continue to follow developments in this initiative. We also welcome the release of the four detainees; the actual number of others still being held under the anti-terrorism ordinance is unknown. Less welcome is the RNA's increasingly expansive interpretation of just who constitutes a "terrorist" and under what conditions they can be held. We believe Deuba

himself, a victim of human rights abuses under the Panchayat regime, is sincere in his pledge to uphold human rights, and we note the RNA has been deployed for just four months under new and admittedly very trying and hazardous circumstances. Nonetheless, the RNA, other security forces, and the GON in general must uphold the rule of law--including those few rights not suspended under the emergency, such as the right to counsel and habeas corpus. The Embassy will continue to press this point with both the civilian leadership and the military. End comment.

MALINOWSKI